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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,829	07/25/2001	Cherie G. House	93-10	7130

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TIMOTHY R. KROBOTH  
KROBOTH LAW OFFICE  
5501 PROVIDENCE COUNTRY CLUB DRIVE  
CHARLOTTE, NC 28277

EXAMINER

HANDY, DWAYNE K

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 05/04/2004

*Handwritten signature*

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/912,829

**Applicant(s)**

HOUSE, CHERIE G.

**Examiner**

Dwayne K Handy

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-15, 18 and 19 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 16, 17 and 20 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03/03/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The Examiner has included a corrected IDS which was originally submitted March 3, 2003 but contained a reference which was not considered by the Examiner before the previous action.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16, 17 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 16 applicant appears to have amended the claim in an attempt to claim a combination of a collection apparatus and a support structure. This is unclear since applicant first recites only "A biological specimen collection apparatus" and has not provided any details as to the structure of the "support structure".

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

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applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 5, 16 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Stingley et al. (6,212,698). This rejection was made in the previous Office Action (mailed 9/29/2003) and remains in effect. Please see Response to Arguments below.

***Allowable Subject Matter***

5. Claims 6-15, 18 and 19 are allowed.

Claims 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: In claim 6, applicant has claimed an apparatus comprised of a U-shaped support bracket and a receptacle. The receptacle has an elongated catch shape (see Figure 3 and page 5, lines 7-23 of the specification) and a boss which snugly fits into an aperture of the support bracket while still allowing for rotation of the receptacle within the aperture. In claim 11 applicant has claimed a collection apparatus comprised of a support bracket, receptacle and a collection cup. The support bracket is comprised of a generally circular aperture and is adapted to be supported on a support structure. The

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receptacle contains a generally frustoconically shaped boss that snugly fits in the aperture of the support bracket while still allowing for rotation of the receptacle while in the aperture. The receptacle boss also is of an appropriate diameter for receiving at least a lower portion of the collection cup. In claim 18 applicant has claimed a biological specimen collection apparatus comprised of a receptacle and a bracket for supporting the receptacle. The receptacle has an elongated catch shape and is rotatably mounted with respect to the support bracket as well as a portion that projects through the support bracket while still remaining removably engaged with the bracket. The bracket is adapted to be supported by a support structure and also adapted to accommodate any position of the elongated receptacle while the receptacle is mounted on the bracket.

### ***Response to Arguments***

7. Applicant's arguments filed 1/22/2004 have been fully considered and while they are persuasive in regards to claim 3, 4, 6-15, 18 and 19, they are not persuasive in regards to claims 1, 2, 5, 16 and 17 which were rejected under 102(e) by "Stingley". Applicant has argued that Stingley does not anticipate the amended claim 1 because the support structure of Stingley cannot be moved "by a seated individual on the toilet bowl seat". The Examiner respectfully disagrees that this line of argument is enough to distinguish the instant claim over the reference. While it may be difficult to do so, the Examiner submits that there is nothing to prevent one from moving the support structure of Stingley while sitting on the support structure – especially when one considers that the support surface need not be limited to the specific structure claimed by applicant in

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claim 1. It appears applicant is attempting to place a limitation on the instant device based on its intended use as well based on this reasoning and the addition of this language to the claim. The Examiner reminds applicant that an apparatus is defined by what it is and not what it does or how it is used. Phrases such as "for catching... for positioning.... for convenient positioning by a seated individual...." are not given patentable weight during the examination of the claims that contain them. In the remaining rejected claims, then, applicant has broadly claimed a receptacle and a U-shaped support bracket adapted to be supported by a support structure with ends that extend beyond the support structure (cls. 1 and 2) as well as a sterile collection cup with a boss (cl. 3) and an aperture in the support structure (cls. 16 and 17). The Examiner believes these features are provided by Stingley since, as previously mentioned, the rest of these claims contain language directed to an intended use of the device.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K Handy whose telephone number is (571)-272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DKH  
May 3, 2004

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700